XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....CR.A.373/.... **सन् 200**1

(17)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT/:
(Accused in jail)

Rajvanshi, S/o Mehtu Gond,
Aged about 35 years,
R/o Village Bhave,
P.S. Gatakhor,
District Rajnandgaon,
Chhattisgarh.

- Versus -

RESPONDENT:

State of Chhattisgarh

Present:

Mr. Raj Kumar Gupta, counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and**
Hon'ble Mr. Dhirendra Mishra, JJ.

ORAL JUDGMENT

(Delivered on 4th April, 2007)

L.C. BHADOO, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 28th February, 2001, passed by the Additional Sessions Judge, Khairagarh, District: Rajnandgaon in Sessions Trial No.149/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of Jelu & Jugri Bai, sentenced him to undergo imprisonment for life and pay a fine of

P.T.O.

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(16)

आदेश पत्रक (पूर्वानुबद्ध)

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Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months.

2. Case of the prosecution is that Mehtar (PW-1) lodged the first information report Ex.P-1 in Police Station: Gatapar to the effect that his parents i.e. Jelu & Jugri Bai used to go to their agricultural field in the night in order to watch the standing crop and protect the same from wild animals. In the evening of 1st November, 1999 after taking their dinner at about 7-8 p.m. they left for the agricultural field, on the next morning they did not return, therefore, he went to the agricultural field and saw that bodies of Jelu & Jugri Bai were lying in the agricultural field in injured condition and both were dead. It was further mentioned in the report that on account of animosity Rajvanshi has committed the murder of his father & mother.

3. After recording merg intimation Ex.P-2, the Investigating Officer left for the scene of occurrence and prepared inquest Ex.P-3 on the body of Jelu and inquest Ex.P-10 on the body of Jugri Bai. He seized plain soil and bloodstained soil from the place of occurrence under Exs.P-4 & P-5. Accused Rajvanshi while in police custody, gave memorandum Ex.P-6 regarding the weapon of offence axe and in pursuance of that, he got recovered the axe under Ex.P-7. Bodies of Jelu & Jugri Bai were sent for post-mortem examination to Primary Health Centre, Khairagarh, where Dr. D.R. Jindani (PW-3) conducted post-mortem on the body of Jelu and opined that the cause of death was shock on account of injuries on neck, he prepared the report Ex.P-8. He also conducted post-mortem on the body of Jugri Bai, prepared the report Ex.P-9 and opined that the cause of death was shock due to injuries.

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आदेश पत्रक (पूर्वानुबद्ध)

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Recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur, from where the report Ex.P-22 was received.

4. After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Khairagarh, who in turn committed the case to the Sessions Judge, Rajnandgaon from where learned Additional Sessions Judge, Khairagarh, received the case on transfer for trial.

5. The prosecution in order to establish charge against the accused examined four witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the evidence appearing against him in the prosecution case and stated that he has been implicated on account of animosity, he is innocent.

6. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforementioned.

7. We have heard Mr. Raj Kumar Gupta, learned counsel for the appellant and Mr. Ashish Shukla, learned Additional Public Prosecutor on behalf of the State/respondent, perused the judgment and evidence of the trial Court.

8. In this case, there is no ocular or direct evidence in order to connect the accused. Even the report lodged by Mehtar, son of the deceased does not disclose the name of the accused. It has been simply mentioned that he has doubt that accused Rajvanshi has committed

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the murder of his parents on account of animosity, but the background of animosity the accused was having against his parents has not been mentioned. As PW-1, he has stated that the accused has committed the murder of his parents, because there was a quarrel between the accused and the deceased on the ground that his parents were practicing witchcraft, beyond that there is nothing as to whether any report was lodged by the accused in the Police Station, when the quarrel took place, any independent witness has been examined, in order to establish that the accused was having grudge or animosity against the deceased persons that they were practicing witchcraft. Therefore, merely on this bald statement, the accused cannot be connected with the crime in question.

9. Other evidence on which the trial Court has relied upon is that the weapon of offence axe was recovered from the possession of the accused at his instance from his residence. As per the evidence of Main Singh (PW-2) & Babulal Sai (PW-4), axe was recovered at the instance of the accused from his house, but such axe is normally found in the village side in every house. As per the F.S.L. report, it has been mentioned that blood was found on the axe. But there is no report that the blood which was found on the axe was human blood, that too of the blood group of the deceased without which merely, on the basis of this report, it will be hazardous to connect the accused with the crime in question. There is no other evidence adduced by the prosecution to connect the accused with the crime in question. Therefore, the conviction is based on no evidence and same cannot be sustained.

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आदेश पत्रक (पूर्वानुबद्ध)

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	10. In the result, the appeal succeeds and the same is allowed. The accused is acquitted of charge under Section 302 of the I.P.C. and the sentence imposed upon him is also set aside. He be set at liberty forthwith, if not required in any other case. **Sd/-** **L.C. BHADOO** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**
Soma		